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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/710,348

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EXAMINER

CHENG, JACQUELINE

ART UNIT

PAPER NUMBER

3768

MAIL DATE

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08/05/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/710,348	Applicant(s) DELA HOUSSAYE, ARTHUR JOSEPH	
	Examiner JACQUELINE CHENG	Art Unit 3768	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☒ Claim(s) 1 and 7 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 November 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments, see pg 9, filed November 5, 2007, with respect to the rejections under Section 112 have been fully considered and are persuasive. The rejections of claims 1, 3, 6, 8, and 9 under section 112 has been withdrawn.
2. Applicant's arguments with respect to rejections under 103 of claims 1-9 have been considered but are moot in view of the new ground(s) of rejection.

Claim Objections

3. Claim 1 is objected to because of the following informalities: claim 1 recites the limitation "the focused ultrasound waves" on line 6. There is insufficient antecedent basis for this limitation in the claim. Appropriate correction is required.
4. Claim 7 is objected to because of the following informalities: the language in claim 7 makes it unclear if the applicant is saying wherein the means for projecting a laser spot comprises both the laser beam projection device and the means for assuring the correct horizontal and vertical alignment or if the applicant is saying the means for projecting a laser spot comprises the laser beam projection device, the means for assuring the correct horizontal and vertical alignment being a separate and additional limitation to the apparatus of claim 2.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matsumura (US 5,056,522) further in view of Hamano (US 4,764,006) further in view of Silverman (US 5,776,068).

7. Claims 1-4, and 8: Matsumura discloses a supersonic (ultrasonic) ophthalmic measuring apparatus comprising a supersonic probe, a body for mounting the probe, a headpiece for stabilizing the patient in relation to the probe, and a processor for calculating measurements. The supersonic probe is used for interrogating the dimensions of the eye such as an axial length. The probe is moved through independently movable joints that can rotate the probe into position and move the probe axially in contact with the eye. As the probe is brought in contact with the eye the pressure force and amount of depression of the cornea is monitored to assure that the correct pressure is applied to the eye (abstract, col. 1 line 40-44, col. 2 line 54-col. 3 line 2, col. 5 line 59-col. 6 line 25). What Matsumura does not disclose is a laser beam being projected on a grid substantially coaxial with the axis of ultrasonic measuring device. However it is well known in the art that to determine the axial length of an eye the eye needs to be focused on a fixation target such as disclosed by Hamano (col. 3 line 21-col. 4 line 10). The location and the type of fixation target would be a design choice and could be any well known type of fixation target such as disclosed by Silverman. Silverman discloses a means for projecting a laser spot onto a grid by

the use of the camera mount, beamsplitter and fixation target (fig. 1 elements 38, 34, and 30 respectively).

8. Claim 9: Matsumura also does not disclose administering anesthesia, however it would be obvious to one skilled in the art to start with this step when there is contact with an instrument such as disclosed by Silverman (col. 2 line 49-50). It would be obvious to add the step of administering anesthesia to Matsumura in order to minimize the discomfort felt by the patient.

9. Claim 5: Neither Matsumura, Hamano nor Silverman discloses a gravity dependent swing arm to apply the force to the eye throughout the measuring period. However Matsumura does disclose using a rotational motor to move the ultrasonic probe from the put away position (solid lines of fig. 1 element 19) to the in use position (dotted lines and arrow of fig. 1 element 19). At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to move the ultrasonic probe into place in any manner well known in the art such as just allowing gravity to swing the arm down in place in front of the eye. Accordingly, one of reasonable skill in the art at the time of invention would find it obvious that the system of Matsumura could be implemented with a gravitational swing arm. Therefore, it would have been prima facie obvious to modify Matsumura to obtain the invention as specified in claim 5 because such a modification would have been considered a mere design consideration which fails to patentably distinguish over the prior art of Matsumura.

10. Claims 6, 7: Matsumura discloses a means for assuring the correct horizontal and vertical alignment of the probe with relation to the gravitational field of the earth as Matsumura discloses assuring the correct horizontal and vertical alignment of the probe in order to provide the correct pressure to the eye. Any alignment of a device would be with relation to the gravitational field of

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the earth. The "correct" alignment does not have to mean being horizontally level, or parallel to the earth's gravitational field and vertically level, or perpendicular to the earth's gravitational field.

11. Claims 10, 11: Matsumura discloses determining the placement of the ultrasonic probe by using various control methods such as a measuring switch, a potentiometer, or a wave form detector. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to use any well known method of determining correct placement of the ultrasonic probe such as using bubble levels. It would have been obvious to modify Matsumura to obtain the invention as specified because such a modification would have been considered a mere design consideration.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 5,442,413 to Frey and US 5,141,302 to Arai.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JACQUELINE CHENG whose telephone number is (571)272-5596. The examiner can normally be reached on M-F 10:00-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 571-272-4956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brian L Casler/
Supervisory Patent Examiner, Art Unit
3737

JC